IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

WP(C).No. 33019 of 2005(E)

AGAINST THE ORDER DATED IN EP.47 of 2004 IN
OS.112/2002 of SUB COURT, KATTAPPANA

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PETITIONER:

MR. RAJAN, AGED 53 YEARS,
S/O. KOCHUKUNJU, THEKKUMOOTTIL HOUSE,
VELLILAMKANDAM KARA, KATTAPPANA.

BY ADV. SRI.S.SACHITHANANDA PAI

RESPONDENT:

K.A. PADMANABHA PILLAI,
AGED 53 YEARS, S/O. AYYAPPAN PILLAI,
MULLOOPARAMBIL HOUSE, KANCHIYAR,
AYYAPPAN KOVIL.

BY ADV. SRI.K.K.CHANDRAN PILLAI
SRI.R.V.SATHYAPRIYAN NAIR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.33019/05

APPENDIX

PETITIONER'S EXTS:

Ext.P1 – TRUE COPY OF OBJECTION FILED BY PETR. DT.2.2.05 BEFORE THE SUB COURT, KATTAPPANA.

Ext.P2 – TRUE COPY OF AFFIDAVIT FILED BY RESPONDENT BEFORE DO., DT.30.5.05

Ext.P3 – TRUE COPY OF ORDER DT.30.8.05 IN EP.47/04 IN O.S.112/02 OF SUB COURT, KATTAPPANA.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.33019 OF 2005

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DATED THIS THE 4TH JUNE, 2007

J U D G M E N T

In this proceeding under Article 227 of the Constitution, the petitioner-judgment-debtor impugns Ext.P3 order of the execution court directing arrest of the petitioner on a finding that he has been wilfully neglecting to pay the decree-debt in spite of sufficient means. It was conceded by the judgment-debtor in his evidence that he owns and possesses 2 acres of land. But his explanation is that the land does not fetch any income. It was admitted by him in the written objection filed by him that he is ready and willing to pay Rs.2000/- per month. The above admission was made by him at least two years after the decree was passed. Thus, on his own admission, a substantial portion of the decree-debt has come to his hands. That itself is justification for Ext.P3.

2. This Court while granting stay imposed a condition that the petitioner shall pay Rs.15,000/-. In all probability that condition was complied with by the petitioner. This Court became inclined to extend the order of stay imposing a further condition that another Rs.15,000/-

shall be paid. The learned counsel are not able to inform me whether the subsequent condition was complied with by the petitioner. Mr.S.Sachithananda Pai, learned counsel for the petitioner submits that he has been informed by his counter-part in the lower court that subsequent to the institution of the writ petition, some settlement has been arrived at between the parties and payments are being made by way of instalments.

3. Whatever that be, I do not find any warrant for setting aside Ext.P3 in this proceeding under Article 227. However, the Writ Petition will stand disposed of directing that the order of stay will continue only subject to the following conditions:-

1) The petitioner has complied with the condition imposed by this Court on 6.1.2006 that he shall pay a further amount of Rs.15,000/- within one month from that date.

2) The petitioner has paid a total amount of Rs.20,000/- after 6.2.2006 (over and above the amount of Rs.15,000/- pursuant to the second direction of this Court).

If it is seen that both the above conditions are complied with, the order

of stay will continue for another five months from today and it is open to the parties to settle the issue between themselves in the meanwhile.

No costs.

(PIUS C. KURIAKOSE, JUDGE)

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